

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN GATTO	:	CIVIL ACTION
	:	
v.	:	NO. 96-4993
	:	
UNITED STATES OF AMERICA	:	(Criminal No. 92-133-2)

MEMORANDUM ORDER

Petitioner was charged in eight counts of a 116 count indictment against multiple defendants with the manufacture and distribution of multi-kilogram quantities of methamphetamine and conspiring to do so over a two-year period. The indictment charges that petitioner and codefendant Lawrence Pirollo were partners and organizers, supervisors or managers in a substantial drug trafficking operation. Pursuant to an agreement with the government, petitioner pled guilty on November 4, 1992 to one count charging that he engaged in a continuing criminal enterprise ("CCE") in violation of 21 U.S.C. § 848. The government agreed to a dismissal of all other charges against petitioner and not to prosecute him further for any offenses related to the CCE activity prior to the agreement except any murder, attempted murder or crime of physical violence. Petitioner was sentenced to a period of 240 months of imprisonment, the minimum sentence mandated by statute, to be followed by five years of supervised release.

On August 11, 1997, the court denied petitioner's petition to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. Presently before the court is petitioner's

Motion for Reconsideration. The motion, however, does not actually appear to be one for reconsideration of the numerous issues presented by petitioner in his petition and addressed by the court in its 26 page memorandum opinion. Rather, in this motion petitioner questions the constitutionality of mandatory sentencing requirements and the fairness of the criminal justice system, particularly certain perceived prosecutorial practices.

As best as the court can discern, petitioner now argues essentially that the statute mandating minimum sentences in drug cases violates his Fifth Amendment right to due process insofar as it effectively precludes a downward departure for extraordinary rehabilitative efforts, which petitioner contends and the court assumes he has made, because this is "unreasonable, arbitrary and capricious." He also argues that 18 U.S.C. § 3553(f), the so-called safety valve provision, is similarly "unconstitutional" insofar as it precludes a departure for a defendant who has made extraordinary rehabilitative efforts but was a manager or supervisor while permitting such a departure for "similarly situated" defendants for whom a mandatory minimum sentence was not triggered. Petitioner also suggests that it is unfair that worse drug offenders have averted mandatory minimum sentences pursuant to § 3553(e) motions by providing substantial assistance to the government which he did not do only because of fear for his safety and that of his family.

The short answer is that even if a particular judge in a given case would impose a lesser sentence if free to do so,

mandatory minimum sentences are reasonably related to the objectives of deterring and penalizing criminal conduct deemed particularly egregious and Congress did not act arbitrarily or capriciously in requiring them; petitioner is by definition not "similarly situated" to other criminal managers or participants in continuing criminal enterprises who are not subject to a statutory mandatory minimum sentence; and, while § 5K1.1 and § 3553(e) give considerable discretion to prosecutors, there is a significant practical need to obtain assistance from knowledgeable persons, often offenders themselves, effectively to investigate crime and prosecute criminals.

One would hope and assume that the government does not ordinarily seek to benefit a more culpable offender at the expense of his less culpable associates. As a practical matter, however, it is often those closer to the top or center of a criminal enterprise who have the type of extensive information required by the government. The reality is that where the prosecutor's door is open, someone will be the first to enter. That petitioner declined to cooperate out of fear of his cohorts may be understandable but it is not unusual. Indeed, this is one reason why the law provides a significant incentive to offenders to assist the government in identifying and prosecuting others engaged in crime.

Petitioner has not presented, or indeed offered, any basis for the court to reconsider its decision of August 11, 1997. Petitioner received the minimum prison sentence mandated

by statute. Congress has made no exception for offenders who have undertaken exceptional rehabilitative efforts. Petitioner has not demonstrated that any of the applicable statutory provisions are unconstitutional.

Because petitioner has not made a substantial showing of the denial of a constitutional right, no certificate of appealability has been issued in this action which was initiated after the effective date of the AEDPA. See 28 U.S.C. § 2253(c)(1)(B); U.S. v. Skandier, 125 F.3d 178, 180 (3d Cir. 1997).

ACCORDINGLY, this day of December, 1997, **IT IS HEREBY ORDERED** that petitioner's Motion for Reconsideration is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.